IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 37716 of 2007(M)

(AGAINST THE ORDER IN E.P.50/06 OF THE SUBORDINATE JUDGE, PALA)

PETITIONER:

ANTONY KURIAN,THAKIDIPPURATHU HOUSE,
VADAKKUM BHAGOM KARA,CHIRACKAKADAVU VILLAGE,
KANJIRAPPALLY TALUK.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

THOMAS THOMAS,KURISUMMOOTTIL HOUSE,
KUNNAM BHAGOM,KANJIRAPPALLY VILLAGE,
KANJIRAPPALLY TALUK,NOW RESIDING AT,
NEAR SUB STATION,MANNARAKKAYAM,KANJIRAPPALLY P.O,
KANJIRAPPALLY KARA,KANJIRAPPALLY VILLAGE,
KANJIRAPPALLY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 37716 OF 2007

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Dated this the 19th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Pala in E.P.50/06. The petition is one for realizing the decree debt by arrest of the judgment debtor. According to the decree holder the judgment debtor has purchased an extent of 2 acres and 13 cents of property in the name of his daughter, Shiny Thomas which has been subsequently sold and therefore he is having sufficient means to discharge the decree debt. The judgment debtor has been examined as DW1 as well. Ext.A1 is the document of the year 1993 whereby the property had been purchased by the daughter of the judgment debtor and Ext.A2 is the document whereby the said property has been sold by the daughter in 2005 and it was on the basis of a power of attorney executed by the daughter in favour of the judgment debtor. So Exts.A1 and A2 documents would only show that

the daughter of the judgment debtor has purchased the property and had disposed of the same. The contention is that she was only 20 years at the time of purchase and therefore the consideration would have been paid by the father. Even if it is true the said purchase is of the year 1993. I am conscious of the fact that if the decree holder is able to establish before the Court that there is realisable estate in the possession of the judgment debtor and when it is established, it is the paramount duty of the judgment debtor to rebut that presumption and explain to the Court the circumstances under which he will not be in a position to raise funds on the strength of those property. Here is a case where there is not even a scrap of paper produced to show that the judgment debtor is having an inch of property in his possession. Therefore, I do not find any fault with the Court below in holding that the decree holder has not established that the judgment debtor has or has had the means after the decree to wipe off the liability and that he is intentionally evading payment of the decree amount. Therefore, the writ petition lacks merit and it is dismissed.

2. I make it clear that if the judgment debtor acquires property subsequently and if it is within the time of limitation it may not be a bar for the decree holder to proceed.

M.N. KRISHNAN, JUDGE.

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